

# FEDERAL COURT OF AUSTRALIA

**Staatz v Berry, in the matter of Wollumbin Horizons Pty Ltd (in liq) (No 2)**

**[2018] FCA 1419**

File number:	QUD 32 of 2018
Judge:	<b>DERRINGTON J</b>
Date of judgment:	13 September 2018
Catchwords:	<b>PRACTICE AND PROCEDURE</b> – adjournment of trial sought following the withdrawal of solicitors a week prior to trial – where new lawyers engaged with effectively one business day to prepare – where but for that engagement there would have been no legally trained persons to act as an effective contradictor in complex litigation – adjournment request granted
Date of hearing:	13 September 2018
Registry:	Queensland
Division:	General Division
National Practice Area:	Commercial and Corporations
Sub-area:	Corporations and Corporate Insolvency
Category:	Catchwords
Number of paragraphs:	10
Solicitor for the Plaintiff:	Ms S Bohan of Patane Lawyers
Counsel for the First Defendant:	The First Defendant appeared via telephone
Counsel for the Second Defendant:	The Second Defendant appeared via telephone
Counsel for the Third, Fourth, Fifth and Sixth Defendants:	Mr J Manner
Solicitor for the Third, Fourth, Fifth and Sixth Defendants:	Mark Swivel Legal

Counsel for the Seventh  
Defendant:

The Seventh Defendant appeared via telephone

Counsel for the Eighth  
Defendant:

The Eighth Defendant appeared via telephone

Counsel for the Ninth  
Defendant:

The Ninth Defendant appeared via telephone

## **ORDERS**

**QUD 32 of 2018**

**IN THE MATTER OF WOLLUMBIN HORIZONS PTY LTD (IN LIQUIDATION)  
ACN 606 581 364**

**BETWEEN:**                    **STEVEN NEVILLE STAATZ AS LIQUIDATOR OF  
WOLLUMBIN HORIZONS PTY LTD (IN LIQUIDATION)  
ACN 606 581 364**  
Plaintiff

**AND:**                        **RON BERRY**  
First Defendant

**GILLIAN NORMAN**  
Second Defendant

**EMANUELE AGUS** (and others named in the Schedule)  
Third Defendant

**JUDGE:**                    **DERRINGTON J**

**DATE OF ORDER:**    **13 SEPTEMBER 2018**

### **THE COURT ORDERS THAT:**

1.     The trial which is set down for four days commencing 17 September 2018, be adjourned to commence on 3 December 2018 for four days.
2.     Costs be reserved.
3.     The date for compliance with order 3 of the Orders of 31 August 2018 be extended to 4 October 2018.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

## **REASONS FOR JUDGMENT**

### **DERRINGTON J:**

- 1 This morning, the third to sixth respondents sought an adjournment of a trial which was set down for hearing commencing on Monday, 17 September 2018. By an unfortunate series of events, the third to sixth defendants, who were previously represented by a legal firm, found themselves without representation. I am not aware of the circumstances behind the former solicitor withdrawing and it is not appropriate for me to inquire. That involves matters as between clients and solicitors and there is no suggestion that the respondents are, themselves, responsible for the state of affairs.
- 2 However, the grave difficulty with the solicitor's late withdrawal is that the hearing of the action, which was to commence on Monday, would effectively be as between the liquidator, who is instructed by very competent solicitors and very competent counsel on the one hand, and, on the other side, a number of lay people who have claims in relation to land which was formerly held by the company in liquidation on the other. That would have been a very invidious situation. Happily, and, again, I am not aware of the circumstances, the third to sixth respondents have fortunately obtained new legal representation through Mr Mark Swivel, solicitor, and Mr Manner of counsel.
- 3 Necessarily, it would be incredibly difficult for Mr Manner and his instructing solicitor to read and digest the large amount of material which has been filed in this matter, which includes numerous affidavits and, in particular, some very lengthy affidavits by the liquidator. It would be impossible for them to adequately advance a case dealing with all of the relevant issues come Monday. If it were necessary to cross-examine the liquidator on some of them, and it might be, I do not know, it would be impossible to ask lawyers, with effectively one business days' notice, to undertake that task. That is also taking into account that they are probably involved in other matters, which would make it additionally difficult.
- 4 Nevertheless, having the assistance of Mr Manner and his instructing solicitor would not only be advantageous to the third to sixth respondents, it would also be advantageous to the other respondents in the matter, because it would provide an analysis of the relevant facts in a way which might, I do not say will, more greatly protect the interests of those people who contributed money to this unfortunate scheme.

- 5 I should, however, mention, as Ms Bohan did for the liquidator, that the conduct of the legal representation for the third to sixth defendants in the past, not those presently engaged, has been less than optimal. To the great frustration of other litigants, including other respondents and the applicants, there have been numerous delays during the interlocutory processes in complying with orders of the Court. That is not acceptable, although that comment can be ameliorated slightly, because this is a difficult matter and the documentation available to the parties is less than fulsome.
- 6 I take into account that there are some parties, including Mr Morandini, who have made arrangements to attend the hearing on Monday and that the adjournment of this matter will cause them financial loss. That is a very significant matter and it weighs heavily in the equation. Nevertheless, ultimately, I think, Mr Morandini has taken a very sensible approach and has, to some extent, accepted that the advancing of an alternative case by an experienced, capable legal practitioner acting in the interests of related respondents may advance his cause substantially. A number of the other respondents agree with the adjournment of the matter, although I suspect rather more out of their own interests than in the interests of the whole, but that is not a pejorative statement. They are entitled to advance their own interests in the way they see fit.
- 7 Ms Bohan for the liquidator made a number of submissions, all of which have probative and substantive force, and I fully accept that the prolongation of this matter will necessarily and unfortunately escalate costs to some extent. Given that the matter is, at least from the liquidator's side, largely prepared in terms of material and submissions, I would hope that the additional costs would be relatively minimal, but, as Ms Bohan has indicated, as a consequence of the large amount of correspondence the liquidator receives, additional costs are incurred in responding to it and dealing with any issues raised. That is regrettable, but, unfortunately, it cannot be helped.
- 8 Ms Bohan also pointed out the matter was commenced in January this year and, in that respect, a matter of this type ought to have been dealt with as quickly as possible. Again, as I said, there is force in that submission. However, I am also cognisant of the fact that there are many difficulties in the issues which are raised. The way in which the application was raised initially was, I would imagine, perfectly proper and no criticism can be made of anyone for the way in which the action was started. It was an attempt to utilise an efficacious and quick process by the liquidator to cheaply determine issues which arose in the liquidation.

9 Unfortunately, the liquidator's desire to achieve that purpose was thwarted, because there are various competing interests which are entitled, and justifiably entitled, to be advanced. One of the difficulties is that the respondents have had insufficient means to obtain legal advice and that has exacerbated the problem.

10 Overall, however, the balance weighs in granting an adjournment. I have dates available in December which I had set aside for other court business and, in particular, writing judgments, but I will forfeit that to accommodate the hearing of this matter. Had it been the case that I could not have heard the matter later this year, I suspect I would have pressed on with the hearing, but, as the delay will be a couple of months, I am prepared to accept that the matter ought be adjourned. Therefore, the orders I make are that:

1. The trial of this matter, which is set down for four days commencing 17 September 2018, be adjourned to commence on 3 December 2018 for four days.
2. Costs be reserved.
3. I will extend the date for compliance with order 3 of my orders of 31 August 2018 to 4 October 2018.

I certify that the preceding ten (10) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Derrington.

Associate:

Dated: 13 September 2018

## **SCHEDULE OF PARTIES**

**QUD 32 of 2018**

### **Defendants**

Fourth Defendant:	MELISSA HIRSCH
Fifth Defendant:	STUART NEWMAN
Sixth Defendant:	NORMA GEELIN MOU
Seventh Defendant:	PHILLIP MORANDINI
Eighth Defendant:	DEAN MOONEY
Ninth Defendant:	CRAIG SCOTT